

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Jeffrey Lynn Franklin,

5 Petitioner

6 v.

7 Jerry Howell, et al.,

8 Respondents

Case No.: 2:18-cv-00444-JAD-NJK

Order Dismissing Case

[ECF Nos. 13, 14]

9 When I reviewed pro se petitioner Jeffrey Lynn Franklin's petition for a writ of habeas
10 corpus last month, I noticed that Franklin had already challenged his conviction once before in
11 *Franklin v. Nevada*, Case No. 3:10-cv-00020-HDM-VPD.¹ That petition was denied on its
12 merits, and the Ninth Circuit denied Franklin a certificate of appealability.² I ordered Franklin to
13 show cause why this petition shouldn't be dismissed as second or successive under 28 U.S.C. §
14 2244(b).³

15 Franklin argues that this petition is not successive because he is challenging not the
16 validity of the judgment—like he did in his first petition—but his sentence computation.⁴ But
17 this sentence-computation label is belied by the substance of his petition. Franklin was
18 adjudicated a habitual criminal.⁵ He doesn't argue that his sentence is illegal under § 207.010;
19 he argues that his habitual-criminal adjudication was illegal.⁶ That is a challenge to the validity
20 of his custody under a state-court judgment of conviction. It is not a challenge based on the
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23 ¹ ECF No. 11.

24 ² *Id.* at 1, nn.3–4.

25 ³ *Id.* at 2.

26 ⁴ ECF No. 13.

27 ⁵ ECF No. 12-1 at 2.

28 ⁶ *Id.* at 4–7.

1 sentence computation that came after judgment of conviction was entered.⁷ This is therefore a
2 successive petition, and Franklin must obtain authorization from the Ninth Circuit before he can
3 file it. Because Franklin must overcome this hurdle first, I need not address his remaining
4 arguments.

5 Accordingly, IT IS HEREBY ORDERED that Franklin's motion to show cause (which is
6 actually his response to my order to show cause) **[ECF No. 13] is DENIED.**

7 IT IS FURTHER ORDERED that Franklin's motion for appointment of counsel **[ECF**
8 **No. 14] is DENIED as moot.**


9 IT IS FURTHER ORDERED that this action is **DISMISSED** as a second or successive
10 petition for a writ of habeas corpus.

11 The **Clerk of Court** is directed to **ADD Adam Paul Laxalt**, Attorney General for the
12 State of Nevada, as counsel for respondents and to **electronically SERVE** respondents a copy of
13 this order. **No response is necessary.**

14 The **Clerk of Court** is also directed to **ENTER JUDGMENT** accordingly and **CLOSE**
15 **THIS CASE.**

16 Because reasonable jurists would not find my decision to dismiss this unauthorized,
17 successive petition to be debatable or wrong, I decline to issue a certificate of appealability.

18 Dated: July 16, 2018

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20 U.S. District Judge Jennifer A. Dorsey
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28 ⁷ See generally *Hill v. Alaska*, 297 F.3d 895 (9th Cir. 2002).